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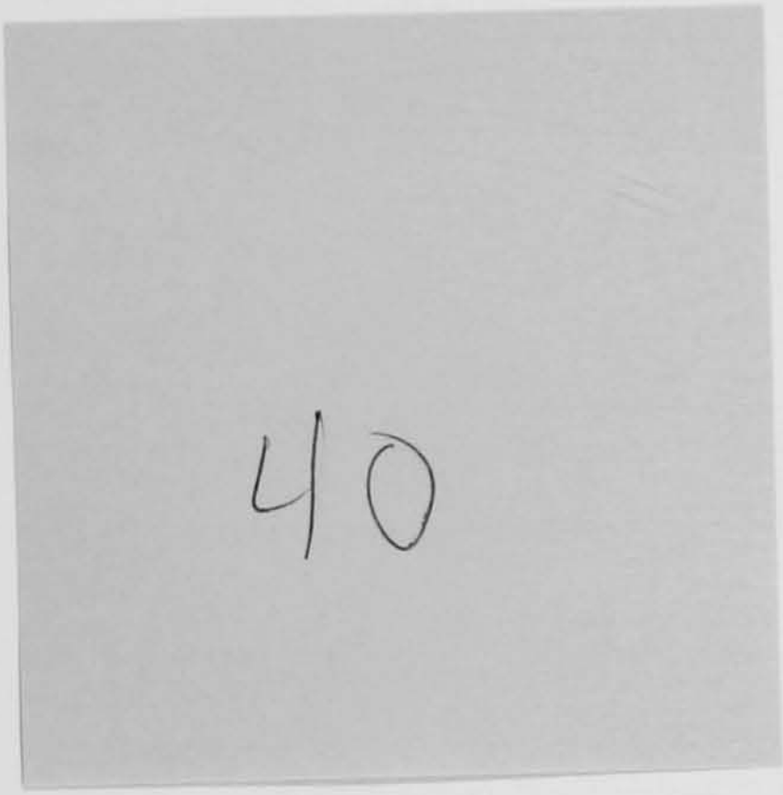
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Once upon a time, in the eleventh century reign of William the Conqueror, scribes compiled a Domesday Book that set forth the economic resources of the realm and named the resourceful holders. Mainly it described landholdings, and the king's men paid it close heed, the better to tax the taxable.

No one in the eleventh century could have predicted that the Domesday Book would become the archetype of internal revenue codes. None could have conceived of all the busy words that scamper back and forth to ferret out all the economic resources of the land, the better to tax the taxpayers, except of course for those who know the arcane ways out of the wayward words. Still, the giant shadow that taxation casts on virtually all law in the twentieth century harks back so relevantly to the tithes of ancient days that one might be tempted to invoke the old saw that *plus ça change, plus c'est la même chose*, or for that matter la même chose in action.

Lawyers trained to see saws in a skeptical light, however, are coming to realize that when the winds of change reach hurricane speed, the shaken landscapes are never again the same. We cannot find the way back to the eleventh century, or to the nineteenth, or even to the early years of our own. Tithes or taxes continue to figure prominently in the legal landscape as before, but they are enveloped in the confusion of the myriad laws attending the simultaneous devastation and construction on a massive scale that mark our time.

For all our alertness to new puzzles in a once familiar picture, we are nonetheless schooled in the tradition that the law must lag at a respectful distance behind the customs and values of the community, in the main confirming rather than innovating change. That tradition makes good sense so long as the lag does not deteriorate into a lapse. Accepting the role of lawyers as respectful laggards, I pose the question whether we have adequately stepped up our laggard pace as the community quickens its own, to preclude a widening gap between the law and what it governs.

The signs multiply that we have not. In some areas there have been noteworthy, if not spectacular, advances; thus new concepts in

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property law have emerged to reflect new forms of intangible property, new patterns of ownership, or new problems of zoning. No comparable lexicon has developed, however, to reflect the significant shift in emphasis from property to people. The need is urgent, now that people have more years to live than before and more opportunities to amplify or disrupt the lives of others, particularly in advanced countries where people now include all people, notably women and even children.

Where are the scholars who will assemble and evaluate widely scattered Domesday Books chronicling new insights into human behavior? Where are the lawmakers who will concern themselves with the newly discovered universes in human beings, the better to govern the benefits and burdens of their relationships?

We cannot content ourselves with noting that there is increasing communication between the scholars in law and in the behavioral sciences.[1] Nor can we rest content that specialists such as psychiatrists are regularly summoned as expert witnesses in civil or criminal litigation.[2] Without discounting such sporadic use of law-related knowledge, one must nonetheless recognize that it is not always subject to well-defined controls. Moreover, there is as yet little effective use of law-related knowledge other than in the field of expert testimony.[3] Scholars have noted, for example, that psychological learning may be effectively used in the analysis of the perceptive power of witnesses,[4] or in the strategic planning of the order of proof,[5] or even at the council tables of international law.[6] Likewise, psychiatry may be invaluable outside the courtroom in the counseling process.[7]

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[1] Behavioral sciences include anthropology, sociology, history, economics, political science, jurisprudence, psychology, education, information theory, cybernetics, linguistics, sign-behavior, game theory, decision-making theory, value inquiry, and general systems theory. Davis, *Behavioral Science and Administrative Law*, 17 J. LEGAL ED. 137, 139 (1965). Genetics, neurology, neurophysiology, and psychiatry have also been viewed as behavioral sciences. *See* Kalven & Tyler, *The Palo Alto Conference on Law and Behavioral Science*, 9 J. LEGAL ED. 366, 370 (1957).

[2] *See, e.g.*, Greenberg, *Social Scientists Take the Stand: A Review and Appraisal of Their Testimony in Litigation*, 54 MICH. L. REV. 953 (1956).

[3] *Cf.* Fahr & Ojemann, *The Use of Social and Behavioral Science Knowledge in Law*, 48 IOWA L. REV. 59 (1962).

[4] *See* Nagel, *Law and the Social Sciences: What Can Social Science Contribute?*, 51 A.B.A.J. 356 (1965).

[5] *See* Levin, *The Law and Behavioral Science Project at the University of Pennsylvania: Evidence*, 11 J. LEGAL ED. 87, 90 (1958).

[6] *See* Franck, *Some Psychological Factors in International Third-Party Decision-Making*, 19 STAN. L. REV. 1217 (1967); *cf.* A. LARSON, DESIGN FOR RESEARCH IN INTERNATIONAL RULE OF LAW (1961).

[7] *See* MacDonald, *The Teaching of Psychiatry in Law Schools*, 49 J. CRIM. L.C. & P.S. 310, 313 (1958); Nagel, *supra* note 4, at 357.

Such cases as *Brown v. Board of Education*[8] illustrate how we can use law-related studies in the courtroom. We have still much to learn about the fact-finding process.[9] It seems fair to speculate that although a little learning in that regard may be dangerous, a great deal might beneficently revolutionize our procedures for assembling and evaluating facts. Thus the University of Chicago jury project has demonstrated the superficiality of various notions about jury behavior by yielding new insights into that behavior.[10]

Certainly we need to proceed from a little learning to a great deal more in history and political science.[11] The orderly evolution of common law rules depends very largely on the judge's understanding of the historical context in which the rules have evolved.[12] The fictional unity of husband and wife, for example, can hardly be understood except in a historical context. In a recent case a wife who conspired with her husband to commit a crime sought to evade responsibility through the disappearing act of fictional unity with her husband. The court took leave of the historical fiction, noting that in a modern context "one plus one adds up to two, even in two-getherness."[13]

It is of equal urgency to infuse modern law with at least an elementary knowledge of accounting and economics. We can ill afford judicial decisions that proceed from such quaint notions as the equation of a term such as surplus with a literal surplus of cash.[14] Though no one can be an expert jack-of-all-trades, it is not too much to ask of any man learned in the law that he also be informed not only of elementary accounting concepts, but of such significant economic developments as the accelerating rise of mergers, notably

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[8] 347 U.S. 483 (1954).

[9] *See generally* J. FRANK, COURTS ON TRIAL (1949); J. MARSHALL, LAW AND PSYCHOLOGY IN CONFLICT (1966).

[10] The study produced evidence, for example, that if the plaintiff's lawyer mentions that the defendant is insured and if in turn the defendant's lawyer objects and the jury is instructed to disregard the comment of the plaintiff's lawyer, the jury is likely to award a higher verdict for the plaintiff than if there had been no objection. Broeder, *The University of Chicago Jury Project*, 38 NEB. L. REV. 744, 754 (1959). *See generally* H. KALVEN & H. ZEISEL, THE AMERICAN JURY (1966).

[11] For a survey of the relevance of such studies to law see Nagel, *supra* note 4, and authorities cited therein.

[12] *See generally* Allen, *History, Empirical Research, and Law Reform: A Short Comment on a Large Subject*, 9 J. LEGAL ED. 335 (1957); Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 443 (1899); Morris, *Law, Justice and the Public's Aspirations*, in NOMOS VI, JUSTICE 170, 184 (C. Friedrich & J. Chapman eds. 1963).

[13] People v. Pierce, 61 Cal. 2d 879, 880, 395 P.2d 893, 894, 40 Cal. Rptr. 845, 846 (1964).

[14] *See* First Industrial Loan Co. v. Daugherty, 26 Cal. 2d 545, 551-56, 561-62, 159 P.2d 921, 924-26, 929 (1945).

conglomerate mergers. If two of a kind cannot melt into one, can two odd balls thus glomerate?

At least there is a ferment of curiosity about the judicial process. Inevitably it tosses up curious new words such as jurimetrics, whose advocates envisage it as determining where the action is in a "calculus of legal predictability" based on mathematical logic and electronic data retrieval.[15] The awe-inspiring sound of jurimetrics inspires the hope that the Greeks may have another word for it that will include the formulation of a calculus for legal unpredictability and perhaps a golden mean between dead certainties and deadly uncertainties. The ideal would seem to be a judicial process that is neither totally predictable nor totally unpredictable. For even though dogged retrievers lay heaps of dead data before the judge, he must still say: "Let us consider the reason of the case. For nothing is law that is not reason."[16]

Nevertheless we should not disdain even the simplest sociological data that could prove useful to the law. Thus polls may shed light on questions of fact such as whether an orange drink deceptively appears to the consumer to have qualities that it does not have.[17] In a dissenting opinion concerning a trade name, Judge Jerome Frank relied on a poll of his own to determine whether women associated a girdle with a magazine because of their common name.[18]

Once the facts are determined, a court can again make good use of the behavioral sciences in arriving at an appropriate remedy or sanction when a variety of them are available. In an unfair labor practice case, for example, sociological data may help the court determine whether, if it approves a cease-and-desist order, it should also approve an order for restitution of back pay.[19] Certainly research findings in the behaviorial sciences are destined to play an increasingly important role in criminal law, not only in adapting punishment to the crime, but in amplifying our understanding of antisocial behavior and in shifting emphasis from punishment to rehabilitation or treatment or incarceration that will protect society

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[15] Vonneuman, Book Review, 73 YALE L.J. 905 (1964). *See* Mermin, *Computers, Law, and Justice: An Introductory Lecture*, 1967 WIS. L. REV. 43, 72-87.

[16] Coggs v. Bernard, 92 Eng. Rep. 107, 109 (K.B. 1705) (Sir John Powell).

[17] *See* United States v. 88 Cases of Bireley's Orange Beverage, 187 F.2d 967 (3d Cir. 1951). *See generally* Greenberg, *supra* note 2, at 957-59; Nagel, *supra* note 4, at 356.

[18] Triangle Publications v. Rohrlich, 167 F.2d 969, 976-78 (2d Cir. 1948) (Frank, J., dissenting).

[19] Rose, *Problems in the Sociology of Law and Law Enforcement*, 6 J. LEGAL ED. 191, 200 (1953).

from the incurable offender without blighting the rehabilitation or treatment of other offenders.[20]

As the law takes unto itself the law-related contributions of the behavioral sciences, some of them reflected in its continually evolving rules, something new is added to a court's perennial dilemma of choosing between an old rule that may be tried but questionably true and a new rule that may prove true but has yet to be tried. Cumulative experience is inducing skepticism about the current reliability of old rules and occasionally even about their original premises. We are slowly learning that the age of a rule does not necessarily guarantee its original wisdom. For too long we accepted such rules with inertia, "unjustifiably relying on the formula that all decisions are created equal and deserve equally to survive."[21] The law gained when "at long last we set an occasional ghost at rest in the past to which it belonged, in the belief that however much the wisdom of the ages deserves to survive, the foibles of the ages do not."[22] "We have accepted too long and too passively museum-piece laws, an anachronistic in our time as amulets and asafetida bags would be in medicine."[23]

Here and there forward-looking courts have been alert to the implications for law of law-related learning. They are still an all too small vanguard, however, at a time when the wages of indifference will be a loss of public confidence in the law. It is high time for widespread heed to such studies as those indicating that imprisonment procedures often operate less to deter crime than to foster it. It is ironic that too many prisons still serve as training schools in the techniques of advanced crime and the evasion of capture and punishment.[24]

Sometimes new data, like old rules, must be evaluated with care. Following *Miranda v. Arizona*,[25] a sample survey found that nine out of ten suspects offered free legal assistance prior to questioning did not accept the offer. The survey staff concluded that there was no significant difference between police interrogation procedures before *Miranda* and after;[26] but the conclusion may be hasty given the paucity of information on pre-*Miranda* procedures. There

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[20] *See, e.g.*, Fahr & Ojemann, *supra* note 3, at 63-64.

[21] Traynor, *Unjustifiable Reliance*, 42 MINN. L. REV. 11, 24 (1957).

[22] *Id.*

[23] *Id.*

[24] *See* Schwartz & Orleans, *On Legal Sanctions*, 34 U. CHI. L. REV. 274, 275 (1967).

[25] 384 U.S. 436 (1966).

[26] Graham, *Study in Washington Finds Most Reject Legal Aid When Offered*, N.Y. Times, July 9, 1967, § 1, at 51, col. 1.

is some plausibility to the criticism that the *Miranda* decision may itself spring from defective psychological grounds: the required police warnings may tend to create an impression of fair and even sympathetic interrogation conducive to incriminating statements. Ironically the *Miranda* decision would then serve as an addendum to the very police manuals it deplores that describe sophisticated techniques for eliciting such statements.[27]

The moral is that the youth of a new rule no more guarantees its wisdom than age guarantees the wisdom of an old one. Even should it prove wise in the long run, its hasty promulgation may meanwhile create more problems than it settles. There is apt to be a painful interregnum between the abandonment of an old rule and the effective implementation of the new when the latter is promulgated without benefit of comprehensive studies on the variety and consequences of existing interrogation procedures and the feasibility of improving them from the ground up, if necessary, to insure optimum fairness to the accused.

It is more usual for courts to err, however, by failing to move ahead at all than by moving ahead too hastily. They have grievously lagged in major areas such as evidence. One scholar notes that the rules admitting so-called declarations against interest and excluding self-serving declarations are inconsistent with psychological learning. In his view, any declaration is self-serving, "for it is motivated by, and is an expression of, a need."[28] Assuming the soundness of such a generalization, a court should make haste slowly to act upon it until it reexamines its exclusionary rules; if all declarations are self-serving, should they then all be excluded, or should we first revise the rules?

We have been slow to revise our ways with presumptions, as a judge well knows who for years reluctantly acceded to the prevailing rule in his jurisdiction that presumptions were evidence.[29] Again, we have naively assumed that the presumption of innocence is taken in earnest; yet one study reveals that many jurors believe a defendant is guilty once the indictment is read.[30] Such a finding serves as a

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[27] N.Y. Times, Sept. 4, 1966, § 1, at 27, col. 1.

[28] J. MARSHALL, *supra* note 9, at 38.

[29] *See* Scott v. Burke, 39 Cal. 2d 388, 402-06, 247 P.2d 313, 321-24 (1952); Speck v. Sarver, 20 Cal. 2d 585, 590-98, 128 P.2d 16, 19-23 (1942); Traynor, *Some Open Questions on the Work of State Appellate Courts*, 24 U. CHI. L. REV. 211, 219 (1957). Under the new *California Evidence Code* operative as of January 1, 1967, "A presumption is not evidence." CAL. EVID. CODE § 600(a) (West 1965).

[30] Levin, *supra* note 5, at 90-91.

caution against the innocence of a presumption that presumptions are invariably taken seriously.

In Professor Black's view, "The supposition that law can live without recourse to social fact is literally insane . . . for it is tantamount to the separation of law from reality, to the making of practical decisions without knowing what they concern or estimating their consequences."[31] Yet the very relevance of behavioral science to law raises fundamental questions as to how it is to be integrated.

How, for example, is law-related knowledge to be presented in the usual adversary proceeding? Note that it might be relevant in one or the other of two distinct contexts. First, it might prove helpful in determining the *adjudicative facts*, as Kenneth Davis has labelled the facts to which law is applied in the process of adjudication.[32] A psychiatrist testifying to a defendant's sanity, for example, is putting adjudicative facts in the record. Second, law-related knowledge might also prove helpful as a source of *legislative facts*, as Professor Davis has labelled whatever data serve as the fabric of new rules and policies.[33]

The same data might serve as adjudicative facts or legislative facts even in the same case.[34] Thus medical knowledge that helps to determine the adjudicative fact of a defendant's mental condition might also be a source of legislative facts relevant to a redefinition of so-called legal insanity.[35]

Ordinarily adjudicative facts are presented as evidence in the trial court, where they can be tested by adversary procedures. A comparable marshalling of legislative facts, however, is rare for various reasons. The parties may not think of it. Their preoccupation is usually with the applicability of existing rules to the specifics of their own case. They may lack the means to present comprehensive evidence of legislative facts, or they may view the cost of such a presentation as exorbitant.

Hence it rests mainly with the courts to be alert to any need

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[31] Black, *Changing (and Unchanging) Faces of Law*, 51 YALE REV. 35, 38-39 (1961).

[32] Davis, *An Approach to Problems of Evidence in the Administrative Process*, 55 HARV. L. REV. 364, 402 (1942); Davis, *Judicial Notice*, 55 COLUM. L. REV. 945, 952 (1955).

[33] Davis, *An Approach to Problems of Evidence in the Administrative Process*, *supra* note 32, at 403; Davis, *Judicial Notice*, *supra* note 32, at 945, 952. *See also* Alfange, *The Relevance of Legislative Facts in Constitutional Law*, 114 U. PA. L. REV. 637 (1966); Karst, *Legislative Facts in Constitutional Litigation*, 1960 SUP. CT. REV. 75 (P. Kurland ed.).

[34] *See* Davis, *Judicial Notice*, *supra* note 32, at 957-58.

[35] *See, e.g.*, Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).

for data when it appears that a decision may involve a determination of legislative facts. A court may find it appropriate at times to remand the case for testimony relevant to such facts.[36] It may appoint a master and order a reference.[37] It may simply call for briefs and oral argument as to one question or another.[38]

It may at times be appropriate for a court to take judicial notice of findings in the behavioral sciences now that the range of materials available for such notice is openly recognized as encompassing more than simply matters of "common and general knowledge" or of "indisputable accuracy."[39] It has long been accepted that judges take judicial notice of the findings of their own research;[40] it is common knowledge that there is a high correlation between the quality of a court's opinions and the quality of its research. It is also efficient as well as informative for courts to draw on the research and experience of governmental agencies or other experts.[41] As early as 1761 Lord Mansfield was relying on expert assistance "by conversing with some gentlemen of experience in adjustments."[42] In commercial matters he relied so regularly on businessmen that a group of them became known as "Lord Mansfield's jurymen."[43] Indeed, one of them was reputed to have "almost as much authority as the Lord Chief Justice himself."[44]

Many, and perhaps most courts are in need of better research facilities, and increasingly they will need computer aids. Thoughtful commentators have long been pondering how an appellate court can also call upon experts themselves for help in arriving at legislative facts when they seem indispensable to sound decision.[45]

Of course there must be fair and efficient allocation of the limited resources of courts no less than of parties.[46] Moreover, before

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[36] *See* Karst, *supra* note 33, at 95.

[37] *See* Beuscher, *The Use of Experts by the Courts*, 54 HARV. L. REV. 1105, 1113-20 (1941).

[38] *See, e.g.*, Karst, *supra* note 33, at 95.

[39] *See* Davis, *Judicial Notice*, *supra* note 32, at 948-52.

[40] *See* Note, *Social and Economic Facts—Appraisal of Suggested Techniques for Presenting Them to the Courts*, 61 HARV. L. REV. 692, 697-98 (1948).

[41] *See, e.g.*, Currie, *Appellate Courts Use of Facts Outside of the Record by Resort to Judicial Notice and Independent Investigation*, 1960 WIS. L. REV. 39, 43-46.

[42] Lewis v. Rucker, 97 Eng. Rep. 769, 772 (K.B. 1761).

[43] 4 J. CAMPBELL, THE LIVES OF THE CHIEF JUSTICES OF ENGLAND 120 (rev. ed. 1894).

[44] *Id.*

[45] *See, e.g.*, C. MCCORMICK, EVIDENCE 712 (1954); Beuscher, *supra* note 37; Note, *Social and Economic Facts—Appraisal of Suggested Techniques for Presenting Them to the Courts*, *supra* note 40, at 700-02; *cf.* Baade, *Social Science Evidence and the Federal Constitutional Court of West Germany*, 23 J. POLITICS 421, 458-61 (1961).

[46] *See* Black, *supra* note 31, at 38-39.

a court relies on given data in arriving at legislative facts, it must give each party an opportunity to examine such data and, if need be, to contest their validity. Whatever the variations on a theme, the ground rules still are those of our adversary system.[47]

There is growing recognition that law evolves most rationally in a universe of discourse, reflecting the totality of significant facts and things and ideas in any given argument. We need to spell out further the criteria for ascertaining whether or not there is a need for legislative facts in any given case, but such articulation should proceed normally as the cases themselves indicate when and why there is need.

The real problem is to foster in judges and adversary lawyers alike what Edmond Cahn has called a sense of "receptivity seasoned with critical judgment"[48] in the evaluation of law-related data. When they are relevant to adjudicative facts their evaluation is simplified by the usual rules of evidence.[49] When, however, they surface as a basis for legislative facts, to be woven into new formulations of law that may involve value judgments, they have entered the broad realm of inquiry where, as Kenneth Davis notes, "findings or assumptions of legislative facts need not, frequently are not, and sometimes cannot be supported by evidence."[50] Indeed, if they were subject to the usual rules of evidence the trial judge would become the final arbiter of law and policy.[51]

If the data offered as a basis for legislative facts are not circumscribed by rules of evidence, relevance still offers a standard for controlling their volume. There remains another problem: What standards of precision should they meet to merit a cautiously tolerant reception?

Before turning our critical eyes to legislative-fact data, let us heed Professor Kalven's words that there is nothing "so wonderful about the legal data we now have or the guesses we otherwise make."[52] We can well heed, too, Judge Frank's reminder that legal

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[47] *See* Davis, *Judicial Notice*, *supra* note 32, at 979, 984; Karst, *supra* note 33, at 109; Traynor, *supra* note 29, at 219.

[48] Cahn, *Jurisprudence*, 31 N.Y.U. L. REV. 182, 183 (1956). *See also* Frankfurter, *The Conditions for, and the Aims and Methods of, Legal Research,* in LAW AND POLITICS 287, 297-98 (1939).

[49] *See* Davis, *An Approach to Problems of Evidence in The Administrative Process*, *supra* note 32, at 402-03 (1942); Note, *Social and Economic Facts—Appraisal of Suggested Techniques for Presenting Them to the Courts*, *supra* note 40.

[50] Davis, *Judicial Notice, supra* note 32, at 952-53.

[51] *See* Note, *Social and Economic Facts—Appraisal of Suggested Techniques for Presenting Them to the Courts*, *supra* note 40, at 699-700.

[52] Kalven, *Some Comments on the Law and Behavioral Science Project at the University of Pennsylvania*, 11 J. LEGAL ED. 94, 97 (1958).

terms do not "possess clear, precise, stable meanings, easily to be learned by thumbing a few judicial opinions and a legal dictionary."[53]

Moreover, we should not ever forget that "[t]he judicial process deals with probabilities, not facts . . . ."[54] As I once noted as to adjudicative facts:

> The problem is that the facts are forever gone and no scientific method of inquiry can ever be devised to produce facsimiles that bring the past to life. . . . However skillfully, however sensitively we arrange a reproduction of the past, the arrangement is still that of the theater. We acknowledge as much when we speak of re-enacting the crime or the accident or perhaps some everyday event; we know better than to speak of reliving it. The most we can hope for is that witnesses will be honest and reasonably accurate in their perception and recollection, that triers of fact will be honest and intelligent in their reasoning, and that appellate courts will frame opinions with enough perspective to guide others in comparable fact situations. . . .[55]

The so-called adjudicative facts, even after they have been filtered through rules of evidence, carry no guarantee of fine precision. Often they pass as objective despite marked adversary color. Often they expand or contract in a viscous context of contradictory evidence, emerging at last in another viscous context of law to legitimize a finding of proximate cause or res ipsa loquitur or other legal concepts of wondrous elasticity.

Should there not be at least as much leeway in standards of precision for the data from law-related fields and for the legislative facts drawn therefrom? Such leeway would be a realistic recognition that the various behavioral sciences differ from one another not only as to their current stages of development but also as to their inherent capacity for precision.[56] Then we could listen intently to a reading of the most recent medical research performed with machines of sensitive precision, offering measurable advances in diagnosis, and still not turn a deaf ear to an account of revealing patterns of animal behavior, derived from rough-and-tumble experimentation, offering valuable clues to human behavior. We could scan the rolls of the demographers, with their emphasis on numbers, and still not close our eyes to the bird's-eye views and the worm's-eye views of the ecologists, with their emphasis on relationships.

We could make good use of legal reasoning to narrow or widen the leeway for the formulation of a so-called legislative fact, reason-

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[53] United States v. Flores-Rodriguez, 237 F.2d 405, 416 (2d Cir. 1956) (Frank, J., concurring).

[54] Traynor, *Fact Skepticism and the Judicial Process*, 106 U. PA. L. REV. 635, 636 (1958).

[55] *Id.*

[56] *See* Fahr & Ojemann, *supra* note 3, at 61-62.

ing that would still spring from the legal controversy itself, from whether or not it afforded an appropriate base for giving the law a new turn. Much might depend on whether the court had to consider the formulation of a new common law rule or a new constitutional rule or whether it confronted a problem of statutory interpretation. It might also be of moment whether a decision would affect primarily rights arising out of property or contract, and would hence reflect a normally heavy reliance on settled law, or whether it would affect primarily legal relationships where such reliance is of less significance or none.

In sum, the process of decision as to legislative facts, like decision on any other matter, still calls for a well-tempered judge able to bring sensitive judgment to a nexus of sensitive problems, as hospitable to new learning as he is versed in old lore, but alert to any frailties in either. Such a judge is aware that the pompous rule of yore has its match in the ersatz pronouncements of a passing new day. We are indebted to Edmond Cahn for his warning that such pronouncements are often deceptively enveloped in the accoutrements of scholarship. He evokes as illustration a book entitled *Is America Safe For Democracy?*, written by William McDougall, at one time a well-known professor of psychology at Harvard. In Cahn's words this work was "filled with racist slander, crude propaganda, and arrant nonsense. The book provided a cloak of pseudoscientific respectability for agitation resulting in the Immigration Act of 1921 and the national origins quota system."[57]

Beware also, one might add, the expert opinions of experts. Sensible men may agree that east is east and west is west, but opinions are a matter of opinion. Too often the expert, well schooled in his own field, sadly lacks the skeptical approach to his own materials that marks the educated man of law. When he is good, his opinions can be of immeasurable help to the law. It is for a judge schooled in skepticism to listen for the words of reason that distinguish such a man from the one who is merely opinionated, however glib he may be in the patois of his profession.

The very independence of judges, fostered by judicial office even when not guaranteed by tenure, and their continuous adjustment of sight to varied problems tend to develop in the least of them some skill in the evaluation of massive data. They learn to detect latent quackery in medicine, to note patent markups in patent medicines, often as variable as the pronunciation of English. They learn to question doddered scientific findings, to question dubious scien-

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[57] Cahn, *supra* note 48, at 194 (1956).

tific discoveries, to edit the swarm spore of the social scientists, to add grains of salt to the fortune-telling statistics of the economists. When it comes to the final judgment, the judge is still in charge of the store.[58]

If we keep in mind that the judge must constantly commit himself to decision and that the experts in law-related fields are under no compulsion to do so, we begin to understand the need for legal educators to serve as middlemen between them. They have the training and resources to systematize and clarify[59] law-related materials and to integrate their salient findings with comparable research in law. Large though such a task looms, it can also achieve substantial economies of research by establishing lines of communication between scholars in law and those working on law-related projects.[60] At the University of California at Los Angeles, members of the Law School faculty are now working closely with faculties from other departments to that end. There are also two independent research units, the Latin American Studies Center and the African Studies Center, that are coordinating law and other disciplines in like manner. The Law School has also embarked on a new program designed to lead to the law degree and a Master of Arts degree in Social Science over a four-year period.

Likewise at the University of California at Berkeley, the Center for the Study of Law and Society, founded in 1961, is now an integral part of the new Earl Warren Legal Institute. Staffed with faculty members from both the School of Law and the School of Social Sciences, it is carrying on valuable interdisciplinary studies.

The University of California will have a trilogy of law-related centers now that the Law School at Davis is establishing an Administration of Criminal Justice Center with a grant from the Ford Foundation.

Other law schools throughout the country are inaugurating like programs. It is no accident that there has also recently come into being a Law and Society Association, which publishes the *Law and Society Review*.

There are always doubting Thomases who view innovation with alarm, ostensibly because they doubt its value but really because

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[58] *See* A. PEKELIS, LAW AND SOCIAL ACTION 39-40 (1950).

[59] *Cf.* Freund, *Dedication Address: The Mission of the Law School*, 9 UTAH L. REV. 45, 47 (1964); Hand, *Have the Bench and Bar Anything to Contribute to the Teaching of Law?*, 24 MICH. L. REV. 466, 480 (1926); Hurst, *Research Responsibilities of University Law Schools*, 10 J. LEGAL ED. 147 (1957).

[60] Such communication, while of critical importance, has been slow in developing. *See* Kaplan, *The Lawyer's Role in Modern Society: A Round Table*, 4 J. PUB. L. 1, 31, 32 (1955).

they may lack capacity for moving ahead with the times. The law has nothing to lose and much to gain by the accelerating interest of law schools in relating law to kindred subjects. Herbert Wechsler reminds us that:

> legal thought becomes constructive and important only as it focuses upon the problems of collective life it is law's function to resolve, identifies the ends that should be sought in their solution, and marshals the means that are adapted to those ends. Such a conception accords relevance to all disciplines outside the law. . . . Law, viewed in that perspective, appears less important as a branch of knowledge in itself than as a context for the ordering of knowledge—all the knowledge that has any bearing on the prudence of the choices that law involves.[61]

The great law schools of the country, attached to great universities, are ideally situated to take the lead in what may become the greatest age of reconstruction of the law that we have ever known. Let us get the new Domesday Books ready for that reconstruction. For the new law, like the old, can be a mighty force in a world that has known too much of devastation.

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[61] Wechsler, *The Law Schools and the Law*, 18 HARV. L. SCH. BULL. 4, 5 (July 1967).